

REMARKS

I. Status of the Claims

Applicant respectfully submits this reply in response to the Office Action mailed on February 23, 2011 (the "Office Action"). By this reply, Applicant has amended claims 1-4, 6, and 7, and added new claims 9-13. Accordingly, claims 1-4, 6, 7, and 9-13 are now pending in this application, with claim 1 being independent. No new matter has been added via the claim amendments and new claims.

As an initial matter, Applicant would like to thank Examiner Young for the courtesy of the interview conducted with Applicant's representative on June 8, 2011. In the interview, the Examiner's interpretation of the applied references and the claims was discussed. Proposed amendments to the claims also were discussed.

The remarks submitted herewith substantially incorporate the substance of the interview. Should the Examiner disagree with Applicant's comments on the substance of the interview, she is invited to contact the undersigned at (202) 408-4335, in order to resolve such disagreement.

In the Office Action, claims 1-4, 6, and 7 were rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over U.S. Patent Pub. No. 2004/0089292 to Pollet et al. ("Pollet") in view of U.S. Patent No. 6,003,205 to Dehaven ("Dehaven") and U.S. Patent No. 4,637,528 to Waschinski et al. ("Waschinski").

Applicant respectfully traverses this rejection for at least the following reasons.

II. Independent Claim 1

Claim 1 recites, among other things, an inhaler comprising a body including a mouthpiece, a cap which can be placed in a position to substantially occlude said

mouthpiece, wherein said cap is attached to said body by an integrally molded strap, and wherein “said cap, when placed in the position to substantially occlude said mouthpiece, is arranged to slide on said strap such that said cap must translate away from said mouthpiece prior to the pivoting of said strap.”

In rejecting independent claim 1, the Office Action relies on Fig. 5a of Pollet, characterizing tubular body 3 as allegedly corresponding to the claimed body, cap 9 as allegedly corresponding to the claimed cap, and strap 10 as allegedly corresponding to the claimed strap. (See Office Action at 2). The Office Action concedes that “Pollet is silent regarding that the cap can slide on the strap” but relies on alleged teachings of Dehaven in an attempt to remedy this deficiency. (See id. at 3.) Without necessarily acquiescing to the Office Action’s characterizations and assertions, Applicant submits, however, that Pollet fails to disclose, teach, or otherwise suggest a cap attached to a body by an integrally molded strap, and wherein “said cap, when placed in the position to substantially occlude said mouthpiece, is arranged to slide on said strap such that said cap must translate away from said mouthpiece prior to the pivoting of said strap,” nor would one of ordinary skill in the art be motivated to modify Pollet to include such features, as agreed upon in the interview.

A. The feature of a cap that, “when placed in the position to substantially occlude said mouthpiece, is arranged to slide on [a] strap” would destroy the principle object of Pollet.

Pollet discloses an apparatus comprising a tubular body 3 having a lip portion 7 and a cap connected to body 3 by a strap 10. (See, e.g., Pollet at Figs. 5a-5c.) Pollet further teaches that strap 10 is “formed of a thermoplastic elastomer material.” (Id. at ¶ [0040].) Notwithstanding these teachings, the Office Action proposes modifying strap 10 “with a cap that slides on a strap . . . for the purpose of providing a more basic strap

that doesn't need to be stretched." (Office Action at 3.) As discussed in the aforementioned interview, however, one of ordinary skill would not be motivated to modify the elastic strap 10 of Pollet, since such a modification would destroy the benefits and principle purpose taught in Pollet.

Indeed, Pollet discloses that, "[a]dvantageously, the inherent elasticity of the thermoplastic elastomer material allows the strap 10 to stretch and extend in length when the cap 9 is pulled in a direction away from the tubular body 3." (Pollet at ¶ [0042] (emphasis added).) More particularly, for example, Pollet teaches that

[i]n the engaged position . . . [,] the strap 10 has elastically recovered to its original, unstretched length, such that the strap 10 is held close to the body 3 and does not extend away from the body 3 in a loop formation. As a result the risk of catching the strap 10 on an object and accidentally dislodging the cap [9] is greatly reduced. Also the overall dimensions of the apparatus in the storage condition are reduced.

(Id. at ¶ [0048].) In other words, the elasticity of strap 10 provides at least the advantages of preventing accidental dislodgment of cap 9 and providing a more compact apparatus. Accordingly, modifying strap 10 such that it "doesn't need to be stretched," as suggested by the Office Action, would destroy the principle purpose and advantages of the Pollet device discussed above.

As such, even assuming, for the sake of argument, that any of Dehaven and Waschinski discloses a cap attached to a body by an integrally molded strap, wherein "said cap, when placed in the position to substantially occlude said mouthpiece, is arranged to slide on said strap such that said cap must translate away from said mouthpiece prior to the pivoting of said strap," one of ordinary skill in the art would not be motivated to modify Pollet based on any of the aforementioned references.

For at least these reasons, independent claim 1 is patentable over the cited references, and therefore Applicant respectfully requests allowance of claim 1.

III. The Dependent Claims

Claims 2-4, 6, 7, and 9-13 depend from claim 1 and are patentable at least due to their dependency. In addition, the dependent claims recite unique combinations that are neither taught nor suggested by the cited references, and therefore, also are separately patentable for these recitations.

For example, and as agreed upon in the interview, the cited references fail to disclose or suggest the features of an inhaler that “is configured to stand upright and unsupported when the base is placed on a support surface, such that when the inhaler is standing upright, the strap, by substantially following the contours of the base, is located between the base and the support surface” (new claim 9); a strap having “an indentation for following the contours of the base” (new claim 10); and a cap including “an opening for receiving the strap as the cap translates towards the mouthpiece” (new claim 13).

IV. Conclusion

In view of the foregoing amendment and remarks, Applicant respectfully requests reconsideration and reexamination of the application, and the timely allowance of the pending claims.

The Office Action contains characterizations of the claims and the related art, with which Applicant does not necessarily agree. Unless expressly noted otherwise, Applicant declines to subscribe to any statement or characterization in the Office Action.


In discussing the specification, claims, and/or drawings, it is to be understood that Applicant is in no way intending to limit the scope of the claims to an exemplary embodiment described in the specification or abstract and/or shown in the drawings. Rather, Applicant is entitled to have the claims interpreted broadly to the maximum extent permitted by statute, regulation, and applicable case law.

Please grant any extensions of time required to enter this reply and charge any additional required fees to Deposit Account No. 06-0916.

Respectfully submitted,

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By  _____
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